

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

ePLUS, INC. : Civil Action No.  
vs. : 3:09CV620  
LAWSON SOFTWARE, INC. : June 11, 2010

COMPLETE TRANSCRIPT OF THE CONFERENCE CALL

BEFORE THE HONORABLE ROBERT E. PAYNE

UNITED STATES DISTRICT JUDGE

## APPEARANCES:

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33:58PM 1

P R O C E E D I N G S

34:00PM 2

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THE COURT: Hello.

34:26PM 4

34:28PM 5

MR. CARR: Good morning, Judge Payne, or good

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THE COURT: This is ePlus against Lawson, civil

3:09CV620. Identify yourselves for the record and who you

represent, and then when you speak, give your name if you will,

please.

MR. WILLETT: On behalf of the plaintiff, ePlus, you

have Henry Willett and Scott Robertson on the line.

MR. CARR: And on behalf of defendant, Lawson

Software, you have Dabney Carr.

THE COURT: All right. You needed to have a

conference call on what you were going to do about the issues

in the *Bilski* case? I just checked. The Supreme Court hasn't

issued any decisions since the 7th of June, at least according

to the website I went to which is the official one. Do you

have anything different than that?

MR. CARR: Judge, this is Dabney Carr. No, I don't.

We made a proposal to ePlus yesterday which I'll describe to

you briefly. Trying to meet the concern you expressed in our

last conference call that this be fully briefed well before the

scheduled hearing on summary judgment which is July 28th --

THE COURT: Yes.

35:48PM 1 MR. CARR: -- what we proposed was that we would --  
35:52PM 2 that Lawson would file a motion based on the *Bilski* decision no  
35:56PM 3 later than six days after the ruling, and we would limit the  
36:02PM 4 brief in support of that motion to ten pages, that the response  
36:06PM 5 to that motion would be due six days later, and that would also  
36:10PM 6 be limited to ten pages, and that a reply would be filed three  
36:14PM 7 days later and would be limited to eight pages.

36:18PM 8 I went on the Supreme Court website to try to figure  
36:20PM 9 out when the term ends. The last thing on the website  
36:24PM 10 indicates a non-argument session on June 28th, so if --

36:30PM 11 THE COURT: That, I think, is the last day of the  
36:34PM 12 term ordinarily, and they issue all the last decisions.

36:38PM 13 MR. CARR: If that were the case, under this  
36:42PM 14 schedule, the briefing would be completed by July, I believe by  
36:46PM 15 July 16th or so which is about a week and a half before the  
36:52PM 16 summary judgment hearing. I believe it's July 28th. So it  
36:56PM 17 felt like that would fit that schedule and still give us an  
37:00PM 18 opportunity to raise this. Of course there's the chance that  
37:04PM 19 we would not file anything if the *Bilski* decision was not  
37:10PM 20 favorable to us.

37:10PM 21 THE COURT: Well, I assumed that.

37:12PM 22 MR. CARR: So that's where we are. ePlus said they  
37:16PM 23 couldn't agree with that proposal, and that prompted requesting  
37:18PM 24 this call.

37:20PM 25 THE COURT: What's the problem with the proposal,

37:22PM 1 gentlemen?

37:22PM 2 MR. ROBERTSON: Your Honor, this is Mr. Robertson.

37:24PM 3 I'm very troubled by a pattern here, and that is, this Court

37:28PM 4 has already ruled on this issue. This was raised at the

37:30PM 5 pretrial, Your Honor, on November 17th, 2009. It was discussed

37:34PM 6 at length specifically with respect to this *Bilski* decision,

37:36PM 7 and Your Honor heard argument from Mr. McDonald who said he

37:40PM 8 didn't even -- and Mr. Willett has forwarded the transcript of

37:44PM 9 that pretrial to you, and Mr. --

37:48PM 10 THE COURT: What page are you talking --

37:48PM 11 MR. ROBERTSON: -- McDonald said he didn't even need

37:50PM 12 to wait until March or April or any other time for the decision

37:52PM 13 to come down from the Supreme Court on *Bilski*, he was prepared

37:56PM 14 to be able to move on it, and what the Court ruled was that the

38:00PM 15 Court said, and I'm now quoting from page 19, I think the

38:02PM 16 answer is let's all do it one time consistent with the local

38:06PM 17 rules and maybe just give you a few more pages, all right? I

38:10PM 18 don't see any more than an extra 15 pages will be necessary to

38:12PM 19 deal with this.

38:14PM 20 And then you went on to say, the one thing you had

38:16PM 21 ruled on was that how to deal with the summary judgment motions

38:20PM 22 which was going to be one. Now, last week they called us, and

38:22PM 23 they asked us for ten additional pages for their summary

38:26PM 24 judgment motion, and rather than trouble the Court, I took the

38:30PM 25 Court's guidance to heart, and we consented to those ten

38:32PM 1 additional pages.

38:34PM 2 So what we have here now is we have a decision that  
38:36PM 3 hasn't come down, that may not come down. The Supreme Court  
38:40PM 4 could say cert was improperly granted. The Supreme Court could  
38:40PM 5 pass it over to another term. We don't know. We're just  
38:44PM 6 speculating --

38:46PM 7 THE COURT: Slow down.

38:48PM 8 MR. ROBERTSON: One thing we --

38:50PM 9 THE COURT: Whoa, whoa, slow down.

38:50PM 10 MR. ROBERTSON: I'm sorry, Your Honor.

38:50PM 11 THE COURT: Ms. Peterson's good, but she just can't  
38:54PM 12 keep up with you.

38:56PM 13 MR. ROBERTSON: I apologize to your stenographer.  
38:58PM 14 That is one of my biggest failings. I will slow down.

39:02PM 15 One thing we know for certain is we don't even know  
39:04PM 16 what the rule of law is going to be coming out of this  
39:08PM 17 decision, and so I admire Mr. McDonald's confidence that he  
39:12PM 18 wants to move for summary judgment on a rule of law that is  
39:14PM 19 completely unknown to everybody right now, but this was  
39:18PM 20 something that he said in the transcript seven months ago that  
39:22PM 21 he could address at any time and he didn't need to wait for the  
39:24PM 22 Supreme Court's ruling.

39:26PM 23 So, again, at the time, the fairness issue of having  
39:30PM 24 two bites at the apple, of delegating from the local rules of  
39:34PM 25 this district and giving multiple bites at the apple is just an

39:40PM 1       unfairness quotient, Your Honor. We gave them additional  
39:44PM 2       pages. They took them as you suggested. The Court ruled, and  
39:46PM 3       now they want another do-over.

39:48PM 4               I'm troubled by this, Your Honor, because we just had  
39:52PM 5       a very contentious hearing before you with respect to the  
39:54PM 6       Shamos report in which the Court had issued an order, and right  
39:58PM 7       before you went on vacation, you modified that order, and you  
40:02PM 8       permitted them to address the Lawson 6.0 and 5.0 with respect  
40:08PM 9       to one additional claim element.

40:10PM 10               Now, we had a briefing schedule you set up, and we've  
40:12PM 11       complied with that, Your Honor, and we submitted our brief on  
40:16PM 12       June 4, and I was concerned that this was going to open the  
40:18PM 13       door for them to try and go ahead and apply the Lawson 5.0 and  
40:24PM 14       6.0 systems to all these other claims, and we got late on  
40:28PM 15       Thursday night, and I didn't appreciate the time, Your Honor,  
40:30PM 16       because we were working on the briefing, we got a Shamos  
40:34PM 17       non-infringement report.

40:34PM 18               Now, let me say that again. It's a non-infringement  
40:36PM 19       report. And in that non-infringement report, Shamos goes on to  
40:40PM 20       apply versions five and 6.0 to every single claim for  
40:44PM 21       invalidity, in a non-infringement report for invalidity, Your  
40:48PM 22       Honor, on all these issues. Now, these guys apparently think  
40:52PM 23       that the Court's rulings are just advisory, and I want to tell  
40:54PM 24       you, Your Honor, I'm going to be moving to strike large  
40:58PM 25       portions of this report, and I'll be asking for sanctions this

41:00PM 1 time because this was completely inappropriate. Your Honor  
41:02PM 2 made clear --

41:04PM 3 THE COURT: Slow down.

41:06PM 4 MR. ROBERTSON: -- for two limited elements --

41:08PM 5 THE COURT: Slow down.

41:08PM 6 MR. ROBERTSON: So this troubles me, Your Honor, that  
41:10PM 7 the Court makes rulings as it did on November 17 and said one  
41:14PM 8 summary judgment, but I'll allow you to have other pages. We  
41:18PM 9 consented to that, and now they want the two summary judgments  
41:20PM 10 back.

41:22PM 11 At some point, they just have to understand that the  
41:24PM 12 Court's rulings are not advisory, and, Your Honor, I just think  
41:26PM 13 it's completely speculative for us to have to sit around and  
41:32PM 14 wait to see if the Supreme Court is going to be ruling on  
41:36PM 15 something and then have to do a whole other briefing schedule  
41:38PM 16 and burden the Court on this when Mr. McDonald said he could  
41:42PM 17 have done it long ago. That is at page six of the transcript,  
41:48PM 18 Your Honor.

41:48PM 19 MR. CARR: Your Honor, may I respond?

41:50PM 20 THE COURT: If he's finished. I would like to let  
41:52PM 21 him finish before you respond.

41:54PM 22 MR. ROBERTSON: I'm done, Your Honor. Thank you.

41:56PM 23 MR. CARR: Your Honor, this is Dabney Carr again for  
41:58PM 24 Lawson. I'd say first, I object to Mr. Robertson's  
42:04PM 25 insinuations about our conduct. I think it's inappropriate. I

12:06PM 1 think it's unfair, and it is coming as a complete surprise to  
12:12PM 2 me in this conference call.

12:16PM 3 ePlus raised none of these issues on what -- the  
12:20PM 4 subject of the conference call is whether or not we could file  
12:22PM 5 a short separate motion about *Bilski*. They raised none of that  
12:28PM 6 with us beforehand, and, Your Honor, they, in fact, sent to you  
12:32PM 7 this transcript no more than 30 minutes ago without telling us  
12:36PM 8 that we were going to be making any submissions to the Court.  
12:38PM 9 I object to their doing that.

12:40PM 10 Obviously, Judge, November was a long time ago, and  
12:44PM 11 many things have changed, and all we are seeking here is the  
12:48PM 12 opportunity to address the Supreme Court's decision on the  
12:50PM 13 *Bilski* case, as we're entitled to be able to do because this  
12:54PM 14 case is still ongoing, and we suggested what we thought was a  
12:58PM 15 reasonable and measured way to do it that would not burden the  
13:04PM 16 Court and would allow us to put this issue before the Court in  
13:10PM 17 summary judgment.

13:10PM 18 Now, all of what Mr. Robertson said regarding Mr.  
13:14PM 19 Shamos's report, that is the first that they have advised  
13:16PM 20 Lawson of any of those objections. I think, as you've said in  
13:22PM 21 the past, if they have a motion, they should file it, and it is  
13:24PM 22 not appropriate to raise at this point in this conference call  
13:28PM 23 having to do with this really very limited request that we're  
13:32PM 24 making of the Court.

13:34PM 25 MR. ROBERTSON: Let me just briefly respond, Your

13:34PM 1 Honor.

13:36PM 2 MR. CARR: Your Honor, you know --

13:36PM 3 THE COURT: Wait a minute --

13:36PM 4 MR. CARR: Your Honor, it is our request, and I would

13:40PM 5 ask to have the last word.

13:42PM 6 THE COURT: I will give you the last word, but he

13:44PM 7 wants to say something, so go ahead.

13:46PM 8 MR. ROBERTSON: Your Honor, I don't understand how

13:48PM 9 providing the Court with a transcript of the pretrial in which

13:52PM 10 this specific issue was addressed and the Court ruled is at all

13:56PM 11 prejudicial. Mr. Willett called me shortly before the call and

13:58PM 12 asked me if I thought it would be helpful. I wanted the Court

14:02PM 13 to see exactly what it had ruled on, exactly what the arguments

14:06PM 14 were so there wouldn't be any question about whether I was

14:10PM 15 misrepresenting what the record was.

14:12PM 16 So, as I said, we think this has been ruled on. I

14:14PM 17 just read the Shamos report over the weekend, Your Honor, as it

14:18PM 18 came in, and so we are going to be raising this issue. We

14:20PM 19 think it is very serious, and we think when the Court reviews

14:24PM 20 it, it's going to appreciate it because the Court only allowed

14:28PM 21 the version 6.0 and 5.0 for very limited purposes, and, you

14:32PM 22 know, I'll let that motion speak for itself, but what I see

14:34PM 23 here, Your Honor, quite frankly, and I think the Court sees it

14:38PM 24 as well, is a pattern here that these orders of the Court get

14:42PM 25 to be revisited, reargued, and reconsidered all the time when

14:48PM 1 it was very clear that -- if the Court just has time to review  
14:52PM 2 the transcript or your law clerk -- this was resolved and  
14:54PM 3 decided, and that when we gave them the additional pages, it  
15:00PM 4 would be inappropriate for them to ask for another summary  
15:02PM 5 judgment. That's our position, Your Honor. Thank you.

15:04PM 6 THE COURT: Mr. Robertson, tell me where it is that  
15:08PM 7 Mr. McDonald said that he didn't need to wait until the Supreme  
15:14PM 8 Court decided the case, that he could brief it.

15:18PM 9 MR. ROBERTSON: At the bottom of page eight of the  
15:20PM 10 transcript, Your Honor.

15:22PM 11 THE COURT: Hold on, let me get there.

15:22PM 12 MR. CARR: Your Honor, I'd like to respond on that  
15:24PM 13 point, because I'm looking at that right now.

15:26PM 14 THE COURT: All right. I haven't shut you all off.  
15:28PM 15 Maybe I should have, but I haven't. I'm a slow page-turner.  
15:34PM 16 I'm back in elementary school here. All right, I've read that.  
16:14PM 17 Thank you.

16:16PM 18 MR. CARR: Your Honor, this is Dabney Carr.

16:18PM 19 THE COURT: Go ahead.

16:18PM 20 MR. CARR: If I'm reading what Mr. Robertson is  
16:22PM 21 referring to, I don't read that as saying that Mr. McDonald is  
16:26PM 22 saying that we can file this right now. What he says is that  
16:30PM 23 there's a decent chance that *Bilski* will be decided by March or  
16:36PM 24 April. Obviously he was wrong about that. And then he says  
16:38PM 25 that I think the issue is sufficiently ripe.

16:42PM 1 That's the closest -- and then he says, I don't think  
16:44PM 2 we're going to wait around until March or April or any other  
16:46PM 3 time for that decision to come down. I don't read that as  
16:50PM 4 saying that he could file it right then.

16:52PM 5 Obviously, I think we could all agree that having the  
16:56PM 6 decision makes -- allows the Court to rule on the issue once  
17:02PM 7 and for all. There really is no use to briefing *Bilski* now  
17:08PM 8 when the decision is expected within three weeks, and I just  
17:12PM 9 don't read -- I think Mr. Robertson has over-read, to mean more  
17:20PM 10 than they say, what Mr. McDonald said in November.

17:22PM 11 THE COURT: But I did say that it ought to all be  
17:26PM 12 done in one summary judgment motion, just have extra pages to  
17:30PM 13 it when we were dealing with it at the time, Mr. Carr. That's  
17:34PM 14 clear, too, isn't it?

17:36PM 15 MR. CARR: That's right, Your Honor. And I don't --  
17:40PM 16 I don't think there's any question that -- at the same time we  
17:44PM 17 asked for the extra pages, we raised with ePlus the *Bilski*  
17:48PM 18 problem and the need to file something later.

17:50PM 19 We didn't sandbag anyone here. I raised it with you  
17:54PM 20 in the conference call we had earlier. We never got ten more  
18:00PM 21 pages and then later on said, well, we want to file this *Bilski*  
18:06PM 22 thing, too. We always presented both issues together.

18:08PM 23 THE COURT: Okay.

18:08PM 24 MR. CARR: Mr. Robertson wasn't on that call earlier  
18:12PM 25 among counsel. Mr. Willett was, but we raised it and discussed

18:16PM 1 it with ePlus before we talked about it with you, so this is  
18:20PM 2 not a surprise to anybody.

18:20PM 3 THE COURT: Okay. The real issue here is, to me is  
18:28PM 4 how is it that we're going to get this issue decided with a  
18:36PM 5 minimum of imposition upon all of us, and that includes counsel  
18:42PM 6 and the Court, given that the Supreme Court has not decided the  
18:48PM 7 case as early as anybody thought they were.

18:54PM 8 There are three more days in which opinions can be  
18:58PM 9 issued, and, in fact, at the end of the term, it is not unusual  
19:04PM 10 that the Court issues its opinions other than on Monday, other  
19:10PM 11 than on Mondays, so it may very well be that it will come down,  
19:14PM 12 but I think -- very soon.

19:18PM 13 The decision to deal with it in one summary judgment  
19:24PM 14 motion and extra pages was made in perspective of the  
19:30PM 15 assumption -- I think it's reflected in the transcript -- that  
19:34PM 16 there would be some ruling from the Supreme Court by the time  
19:40PM 17 that summary judgment motions were filed but that it was  
19:44PM 18 possible that it would not.

19:50PM 19 So I think the best way to deal with this from the  
19:54PM 20 case management standpoint is to allow there to be separate  
20:00PM 21 briefing after the *Bilski* decision is decided by the Supreme  
20:04PM 22 Court. That way we don't have to do it but once. All of you  
20:08PM 23 have enough to do without having to brief it as the matter  
20:18PM 24 stands now assuming that the federal circuit will be affirmed  
20:22PM 25 and then re-briefing it later, so I think that's the best way

50:28PM 1 to go about it.

50:28PM 2 Now, as to the timing, the proposals set out by  
50:34PM 3 Lawson seem to be reasonable under the assumptions that all of  
50:42PM 4 you have kind of kept up with the *Bilski* case and know what the  
50:48PM 5 issues are and are able to do some basic structuring and  
50:54PM 6 thinking now about your brief, but it's right foolhardy to  
51:02PM 7 presume that we know what the Supreme Court is going to do, and  
51:08PM 8 so I would think that there will be some twists and turns that  
51:14PM 9 come out of the Supreme Court opinion that you all haven't  
51:16PM 10 foreseen yet, and we'll go from there.

51:20PM 11 What do you think about the time frame -- I will have  
51:24PM 12 to tell you, on a whole other topic, if there comes a motion  
51:28PM 13 about the Shamos report, I'll consider it, but what I did was  
51:34PM 14 key the allowance of the extra issue in that order after the  
51:48PM 15 hearing to be confined to the way the issue was presented in  
51:58PM 16 the brief that was being argued on the day of the hearing and  
52:02PM 17 that Mr. McDonald couldn't put together an argument on because  
52:08PM 18 it had slipped his mind, and I was trying to give him an  
52:12PM 19 opportunity to recoup what he said at the hearing, and that is  
52:22PM 20 he couldn't think of anything right then, and it sounded to me  
52:26PM 21 like there might be some merit -- I mean some wisdom to let him  
52:32PM 22 at least be heard, particularly given the ruling that I had  
52:36PM 23 made on the other part of what he said about how the claim  
52:42PM 24 construction opinion affected the Shamos report, but it was a  
52:50PM 25 very limited grant, and if he's exceeded that grant, you all

52:56PM 1 better sit down and talk about it and see if you can't just get  
52:58PM 2 stricken what it is that's not within the grant, because I'm  
53:04PM 3 not going to consider something -- I didn't open the door,  
53:08PM 4 intend to open the door to whole new issues, but on this --  
53:14PM 5 and, Mr. Robertson, you seem to be distressed that a ruling in  
53:28PM 6 favor of Lawson on the *Bilski* issue will presage a favorable  
53:34PM 7 ruling on their abuse of the limited grant that was given them  
53:42PM 8 in the order as you see it, and I will assure you that that  
53:46PM 9 isn't how I decide things, and we'll just take them as they  
53:52PM 10 come.

53:52PM 11 MR. ROBERTSON: I understand, Your Honor.

53:54PM 12 THE COURT: What about the time frame, six days, six  
53:58PM 13 days -- what is it, six days, six days, and what, Mr. Carr?

54:04PM 14 MR. CARR: I said three days, Your Honor.

54:04PM 15 THE COURT: Six days, six days, and three days; what  
54:08PM 16 do you think about that, Mr. Robertson?

54:12PM 17 MR. ROBERTSON: Your Honor, I'd like to actually sit  
54:14PM 18 down and map that out on a calendar with the probable dates,  
54:18PM 19 because we have a lot of moving parts, as you might imagine,  
54:20PM 20 going on in this case right now with expert depositions  
54:24PM 21 commencing.

54:24PM 22 We're still following up on some fact depositions  
54:28PM 23 that have scheduling issues. I was just in New York in a  
54:32PM 24 deposition yesterday, Your Honor, so we've been flying all  
54:36PM 25 around trying to get these things done.

54:36PM 1 I will say, I mean as to the page limits in this  
54:40PM 2 *Bilski* issue, I mean who knows what the rule of law is going to  
54:44PM 3 be and how complex it might be. Ten pages, ten pages, eight  
54:46PM 4 pages, I think, puts the plaintiff at a little bit of a  
54:50PM 5 disadvantage given that we are the ones whose claims they are  
54:54PM 6 attempting to invalidate by clear and convincing evidence, so I  
54:56PM 7 don't know that we need to trouble the Court with this other  
55:00PM 8 than we need to make sure it fits in the timing such the Court  
55:02PM 9 can hear it on July 28th.

55:06PM 10 THE COURT: I think you need to work that out, and  
55:08PM 11 that's somewhat of a moving target, but the other thing is you  
55:14PM 12 can agree on X days, X days, and X days, and then if the  
55:18PM 13 opinion comes out earlier, you can kind of agree on a slight  
55:20PM 14 modification to give yourselves a little more breathing room.

55:24PM 15 MR. ROBERTSON: That's what I'd like to do. I'd like  
55:26PM 16 to work it out with counsel for Lawson and not trouble the  
55:28PM 17 Court with it.

55:28PM 18 THE COURT: And the page limitation ought to be such  
55:32PM 19 that both parties have the same number of pages, so if you get  
55:36PM 20 ten and eight, then they get 18. Do you follow me, Mr. Carr?

55:42PM 21 MR. CARR: Yes, Your Honor. Maybe not quite. Are  
55:46PM 22 you saying the opening and the response brief should be the  
55:48PM 23 same pages, but a movant always gets a reply that allows them  
55:54PM 24 to have a few additional pages.

55:54PM 25 THE COURT: I'm changing the rule.

55:56PM 1 MR. CARR: All right.

55:58PM 2 THE COURT: I want you to both have about the same  
56:00PM 3 number of pages. So if you want ten and then eight, then their  
56:08PM 4 response brief will be 18. If you want 20 and ten, then their  
56:14PM 5 response brief will be 30. I don't propose to do any more  
56:20PM 6 mathematical permutations or combinations. I think you all got  
56:26PM 7 the drift on that adequately, so we'll discuss something else  
56:28PM 8 if it needs to be discussed. Does it?

56:32PM 9 MR. ROBERTSON: I don't think so, Your Honor.

56:34PM 10 THE COURT: Okay. Now, what have you -- what I

56:38PM 11 haven't heard is what you people have done about getting down,  
56:44PM 12 getting your executives together with Judge Dohnal to try to  
56:48PM 13 settle this case, and what have you done?

56:54PM 14 That's a resounding silence so far is the way I have  
56:58PM 15 to describe the response. Since you are the plaintiff and you  
57:02PM 16 have to make a demand, we'll just put the burden on you to talk  
57:06PM 17 first, Mr. Robertson.

57:08PM 18 MR. ROBERTSON: Yes, Your Honor, thank you. We did  
57:10PM 19 make a demand --

57:10PM 20 THE COURT: I'm not talking about that. Have you  
57:12PM 21 gone back since the arguments and the hearings we had and the  
57:16PM 22 claim construction opinion and gone to talk to each other about  
57:26PM 23 settlement and arranged for anything in front of Judge Dohnal  
57:30PM 24 on that score?

57:32PM 25 MR. ROBERTSON: We did go to Judge Dohnal after the

57:36PM 1 argument on the motion to strike, of course, to the Shamos  
57:40PM 2 report, Your Honor, and he indicated his doors were open. I  
57:42PM 3 must say since then we've really -- I would speak for both  
57:48PM 4 sides and say we've been very busy just trying to meet the  
57:52PM 5 deadlines in this case and complete depositions, so the answer,  
57:56PM 6 Your Honor, is, no, we have not been back with Judge Dohnal,  
57:58PM 7 and we're right now in the middle of the -- the summary  
58:00PM 8 judgment is being filed by Lawson today, and we've had to  
58:04PM 9 adjust the briefing schedule on that.

58:08PM 10 As I represented to the Court in the November  
58:10PM 11 pretrial, plaintiff has not filed any summary judgment motions.  
58:14PM 12 We're looking forward to trying this case, but what I will do  
58:18PM 13 is try to pick an opening in a very busy schedule over the next  
58:24PM 14 three weeks to try and get down with my principal, my CEO and  
58:30PM 15 the president of ePlus Systems, Inc., to meet with Judge  
58:32PM 16 Dohnal. I'll represent to the Court that, you know, we haven't  
58:38PM 17 received any -- the offer from Lawson --

58:40PM 18 MR. CARR: Your Honor, I'm not sure you want to hear  
58:44PM 19 offers.

58:44PM 20 MR. ROBERTSON: Well, Your Honor, we haven't received  
58:48PM 21 any settlement proposal.

58:50PM 22 MR. CARR: Your Honor, again, I don't think that's  
58:50PM 23 appropriate.

58:52PM 24 THE COURT: Well, what I want you to do is to answer  
59:00PM 25 this question yes or no, Mr. Robertson: Has ePlus put a demand

59:06PM 1 to Lawson?

59:08PM 2 MR. ROBERTSON: Yes.

59:08PM 3 THE COURT: Mr. Carr, has Lawson put a response to  
59:16PM 4 that demand to ePlus?

59:20PM 5 MR. CARR: My understanding is yes, Your Honor, but  
59:22PM 6 I'm not directly involved in that, but yet I believe that's the  
59:26PM 7 case. And I think, and Scott can correct me if I'm wrong, I  
59:30PM 8 think the executives have talked directly to each other. Is  
59:34PM 9 that right, Scott?

59:34PM 10 MR. ROBERTSON: There was some correspondence that I  
59:36PM 11 think was exchanged that was probably I would describe as not  
59:40PM 12 productive.

59:46PM 13 THE COURT: There was a plan to have the executives  
59:48PM 14 talk after their respective depositions, and then the last I  
59:52PM 15 heard from you, you didn't think -- the deposition got put off  
59:58PM 16 because you had to come down and do the argument on the Shamos  
00:00PM 17 report, and then the last I heard was in the courtroom that you  
00:10PM 18 weren't sure you were even going to reschedule the depositions,  
00:12PM 19 and I think I told you to go on and get with Judge Dohnal  
00:16PM 20 anyway.

00:16PM 21 MR. ROBERTSON: We determined that we would save the  
00:22PM 22 CEO the inconvenience of a deposition that was of marginal  
00:26PM 23 value, but there's great value to have them meet and see if  
00:30PM 24 they can discuss the issues.

00:32PM 25 THE COURT: All right. Well, you all get back and

00:34PM 1 arrange something with Judge Dohnal, and here's what I don't  
00:38PM 2 want to happen. You both have problems in this case, and you  
00:44PM 3 better both realize you have problems in the case, and you both  
00:50PM 4 have incentives to settle the case. So ePlus, don't make a  
00:58PM 5 ridiculous demand, and Lawson, don't make a ridiculous  
01:02PM 6 response, and if I hear that's happened -- this isn't a bench  
01:08PM 7 trial, so I'll ask about it. If I hear that's happened, then  
01:14PM 8 you're going to be talking, having your chief executives appear  
01:24PM 9 on my order to discuss things, and enough -- there's a good  
01:34PM 10 reason for both of you to settle the case, and I certainly want  
01:38PM 11 it discussed now and I don't want, please, you to let the  
01:42PM 12 events that are taking place in the case keep that from  
01:46PM 13 happening.

01:46PM 14 It is not at all unusual that there's a trial group  
01:52PM 15 and a group that discusses settlement, and there isn't any  
01:58PM 16 reason why the trial lawyers have to be involved in the  
02:00PM 17 discussion of settlement. The fact of the matter is it's  
02:02PM 18 counterproductive sometimes, but you can have somebody on the  
02:06PM 19 case who knows what's going on assigned as the lawyer to advise  
02:10PM 20 on the settlement. And you can talk ahead of time with your  
02:16PM 21 clients about what various options and positions are if perhaps  
02:20PM 22 you exchange some information ahead of time, and you can have  
02:22PM 23 this process be a meaningful one if you but try, but if you  
02:28PM 24 keep believing that both of you have a hands-down going-away  
02:32PM 25 winner, you're not going to get anywhere.

02:36PM 1           But settlements, proposals that are ridiculous on  
02:42PM 2 either end aren't good-faith settlement proposals, and if I  
02:48PM 3 have the sense that's going on, I'm going to intercede,  
02:50PM 4 intervene and stop it and figure out a mechanism to require it  
02:56PM 5 to be a meaningful settlement. I've tried to leave it to you  
03:04PM 6 all to work that out, but you haven't done very well so far, so  
03:06PM 7 I hope with those thoughts you can get yourselves together.  
03:12PM 8 Anything else?  
03:14PM 9           MR. CARR: No, Your Honor.  
03:16PM 10           THE COURT: And I'm going to call Judge Dohnal and  
03:18PM 11 tell him what I just said.  
03:20PM 12           MR. CARR: I have nothing else, Your Honor. I was  
03:24PM 13 going to ask Ms. Peterson if she can send us the transcript of  
03:28PM 14 this call once it's ready.  
03:30PM 15           THE COURT: Do you want it ready expedited or not?  
03:32PM 16 As long as you are placing an order.  
03:36PM 17           MR. CARR: I will take it as quickly as Ms. Peterson  
03:40PM 18 can get it to me, but I don't want her having to work over the  
03:42PM 19 weekend if she has other things to do.  
03:46PM 20           THE COURT REPORTER: Thank you.  
03:46PM 21           THE COURT: Do you want something, Mr. Robertson?  
03:48PM 22           MR. ROBERTSON: Certainly. If there's a transcript  
03:50PM 23 being prepared, I'll take it when it's prepared.  
03:54PM 24           THE COURT: All right. Thank you very much.  
04:00PM 25           MR. CARR: Thank you, Judge.

1  
2 (End of proceedings.)  
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5 I certify that the foregoing is a correct transcript  
6 from the record of proceedings in the above-entitled matter.  
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8

9 /s/  
10 P. E. Peterson, RPR

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